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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1339

Introduced by Assembly Member Maienschein

February 22, 2013

An act to amend Sections 1510, 1821, 2250, and 2643 of, and to add Sections 2614.7, 2614.8, and 2643.1 to, the Probate Code, relating to professional fiduciaries.

LEGISLATIVE COUNSEL'S DIGEST

AB 1339, as amended, Maienschein. Professional fiduciaries: guardians and conservators.

Existing law provides that a relative or other person on behalf of a minor, or a minor if he or she is 12 years of age or older, may file a petition for the appointment of a guardian of the person or estate of the minor. Existing law also provides that certain persons may file a petition for the appointment of a conservator. Existing law provides that on or after the filing of a petition for appointment of a guardian or conservator, a person entitled to petition for the appointment of a guardian or conservator may file a petition for the appointment of a temporary guardian or temporary conservator, as specified. Under existing law, when a petition to appoint a conservator or a temporary conservator is

filed, and the petitioner is a professional fiduciary, as defined, the petition must include specified additional information, including the petitioner's license information and a statement explaining who engaged the petitioner or how the petitioner was engaged to file the petition for appointment of a conservator and what prior relationship the petitioner had with the proposed conservatee or the proposed conservatee's family or friends.

This bill would require that when a petition to appoint a conservator or a temporary conservator is filed, and the petitioner or proposed conservator is a professional fiduciary, as defined, the petition also include the petitioner's or proposed conservator's proposed hourly fee schedule or another statement of the petitioner's or proposed conservator's proposed compensation from the estate of the proposed conservatee for services performed. *The bill would provide that provision of that schedule or statement shall not preclude a court from reducing the hourly fees or other compensation.*

This bill would also require, when a petition to appoint a guardian or temporary guardian is filed, and the petitioner or proposed guardian is a professional fiduciary, as defined, the petition to include the same additional information as when a professional fiduciary files a petition to appoint a conservator or a temporary conservator. *The bill would also provide that provision of a proposed hourly fee schedule or another statement of proposed compensation shall not preclude a court from reducing the fees or other compensation.*

Existing law requires, within 90 days of a guardian's or conservator's appointment, the guardian or conservator to file an inventory and appraisal.

This bill would require the guardian or conservator, if he or she is a professional fiduciary, as defined, to file concurrently with the inventory and appraisal a proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the ward or conservatee for services performed. The bill would also authorize the guardian or conservator to submit a new proposed hourly fee schedule or another statement of his or her proposed compensation at any time on or after one year from the original submission, as specified. *The bill would provide that filing or submittal of those schedules or statements shall not preclude a court from reducing the guardian's or conservator's hourly fees or other compensation or his or her attorney's fees, as the case may be.*

Existing law permits the court, on petition by the guardian or conservator, to authorize periodic payments on account to the guardian or conservator for the services rendered by those persons during the period covered by each payment.

This bill would permit the court, on petition by a guardian or conservator who is a professional fiduciary, as defined, to authorize periodic payments on account only if the guardian or conservator filed a proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the ward or conservatee for services performed with the inventory and appraisal and only after addressing all objections to the petition. ~~This~~ *The* bill would also provide that the authorization for periodic payments to a guardian or conservator who is a professional fiduciary, as defined, shall terminate on a date determined by the court, but not later than the due date of the next succeeding accounting.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1510 of the Probate Code is amended to
- 2 read:
- 3 1510. (a) A relative or other person on behalf of the minor, or
- 4 the minor if 12 years of age or older, may file a petition for the
- 5 appointment of a guardian of the minor. A relative may file a
- 6 petition for the appointment of a guardian under this section
- 7 regardless of the relative's immigration status.
- 8 (b) The petition shall request that a guardian of the person or
- 9 estate of the minor, or both, be appointed, shall specify the name
- 10 and address of the proposed guardian and the name and date of
- 11 birth of the proposed ward, and shall state that the appointment is
- 12 necessary or convenient.
- 13 (c) The petition shall set forth, so far as is known to the
- 14 petitioner, the names and addresses of all of the following:
- 15 (1) The parents of the proposed ward.
- 16 (2) The person having legal custody of the proposed ward and,
- 17 if that person does not have the care of the proposed ward, the
- 18 person having the care of the proposed ward.
- 19 (3) The relatives of the proposed ward within the second degree.

1 (4) In the case of a guardianship of the estate, the spouse of the
2 proposed ward.

3 (5) Any person nominated as guardian for the proposed ward
4 under Section 1500 or 1501.

5 (6) In the case of a guardianship of the person involving an
6 Indian child, any Indian custodian and the Indian child's tribe.

7 (d) If the petitioner or proposed guardian is a professional
8 fiduciary, as described in Section 2340, who is required to be
9 licensed under the Professional Fiduciaries Act (Chapter 6
10 (commencing with Section 6500) of Division 3 of the Business
11 and Professions Code), the petition shall include the following:

12 (1) The petitioner's or proposed guardian's proposed hourly fee
13 schedule or another statement of his or her proposed compensation
14 from the estate of the proposed ward for services performed as a
15 guardian. The petitioner's or proposed guardian's provision of a
16 proposed hourly fee schedule or another statement of his or her
17 proposed compensation, as required by this paragraph, shall not
18 preclude a court from later reducing the petitioner's or proposed
19 guardian's fees or other compensation.

20 (2) Unless a petition for appointment of a temporary guardian
21 that contains the statements required by this paragraph is filed
22 together with a petition for appointment of a guardian, both of the
23 following:

24 (A) A statement of the petitioner's or proposed guardian's
25 license information.

26 (B) A statement explaining who engaged the petitioner or
27 proposed guardian or how the petitioner or proposed guardian was
28 engaged to file the petition for appointment of a guardian or to
29 agree to accept the appointment as guardian and what prior
30 relationship the petitioner or proposed guardian had with the
31 proposed ward or the proposed ward's family or friends.

32 (e) If the proposed ward is a patient in or on leave of absence
33 from a state institution under the jurisdiction of the State
34 Department of State Hospitals or the State Department of
35 Developmental Services and that fact is known to the petitioner
36 or proposed guardian, the petition shall state that fact and name
37 the institution.

38 (f) The petition shall state, so far as is known to the petitioner
39 or proposed guardian, whether or not the proposed ward is
40 receiving or is entitled to receive benefits from the Veterans

1 Administration and the estimated amount of the monthly benefit
2 payable by the Veterans Administration for the proposed ward.

3 (g) If the petitioner or proposed guardian has knowledge of any
4 pending adoption, juvenile court, marriage dissolution, domestic
5 relations, custody, or other similar proceeding affecting the
6 proposed ward, the petition shall disclose the pending proceeding.

7 (h) If the petitioners or proposed guardians have accepted or
8 intend to accept physical care or custody of the child with intent
9 to adopt, whether formed at the time of placement or formed
10 subsequent to placement, the petitioners or proposed guardians
11 shall so state in the guardianship petition, whether or not an
12 adoption petition has been filed.

13 (i) If the proposed ward is or becomes the subject of an adoption
14 petition, the court shall order the guardianship petition consolidated
15 with the adoption petition, and the consolidated case shall be heard
16 and decided in the court in which the adoption is pending.

17 (j) If the proposed ward is or may be an Indian child, the petition
18 shall state that fact.

19 SEC. 2. Section 1821 of the Probate Code is amended to read:

20 1821. (a) The petition shall request that a conservator be
21 appointed for the person or estate, or both, shall specify the name,
22 address, and telephone number of the proposed conservator and
23 the name, address, and telephone number of the proposed
24 conservatee, and state the reasons why a conservatorship is
25 necessary. Unless the petitioner or proposed conservator is a bank
26 or other entity authorized to conduct the business of a trust
27 company, the petitioner or proposed conservator shall also file
28 supplemental information as to why the appointment of a
29 conservator is required. The supplemental information to be
30 submitted shall include a brief statement of facts addressed to each
31 of the following categories:

32 (1) The inability of the proposed conservatee to properly provide
33 for his or her needs for physical health, food, clothing, and shelter.

34 (2) The location of the proposed conservatee's residence and
35 the ability of the proposed conservatee to live in the residence
36 while under conservatorship.

37 (3) Alternatives to conservatorship considered by the petitioner
38 or proposed conservator and reasons why those alternatives are
39 not available.

1 (4) Health or social services provided to the proposed
2 conservatee during the year preceding the filing of the petition,
3 when the petitioner or proposed conservator has information as to
4 those services.

5 (5) The inability of the proposed conservatee to substantially
6 manage his or her own financial resources, or to resist fraud or
7 undue influence.

8 The facts required to address the categories set forth in
9 paragraphs (1) to (5), inclusive, shall be set forth by the petitioner
10 or proposed conservator if he or she has knowledge of the facts or
11 by the declarations or affidavits of other persons having knowledge
12 of those facts.

13 If any of the categories set forth in paragraphs (1) to (5),
14 inclusive, are not applicable to the proposed conservatorship, the
15 petitioner or proposed conservator shall so indicate and state on
16 the supplemental information form the reasons therefor.

17 The Judicial Council shall develop a supplemental information
18 form for the information required pursuant to paragraphs (1) to
19 (5), inclusive, after consultation with individuals or organizations
20 approved by the Judicial Council, who represent public
21 conservators, court investigators, the State Bar, specialists with
22 experience in performing assessments and coordinating
23 community-based services, and legal services for the elderly and
24 disabled.

25 The supplemental information form shall be separate and distinct
26 from the form for the petition. The supplemental information shall
27 be confidential and shall be made available only to parties, persons
28 given notice of the petition who have requested this supplemental
29 information or who have appeared in the proceedings, their
30 attorneys, and the court. The court shall have discretion at any
31 other time to release the supplemental information to other persons
32 if it would serve the interests of the conservatee. The clerk of the
33 court shall make provision for limiting disclosure of the
34 supplemental information exclusively to persons entitled thereto
35 under this section.

36 (b) The petition shall set forth, so far as they are known to the
37 petitioner or proposed conservator, the names and addresses of the
38 spouse or domestic partner, and of the relatives of the proposed
39 conservatee within the second degree. If no spouse or domestic
40 partner of the proposed conservatee or relatives of the proposed

1 conservatee within the second degree are known to the petitioner
2 or proposed conservator, the petition shall set forth, so far as they
3 are known to the petitioner or proposed conservator, the names
4 and addresses of the following persons who, for the purposes of
5 Section 1822, shall all be deemed to be relatives:

6 (1) A spouse or domestic partner of a predeceased parent of a
7 proposed conservatee.

8 (2) The children of a predeceased spouse or domestic partner
9 of a proposed conservatee.

10 (3) The siblings of the proposed conservatee's parents, if any,
11 but if none, then the natural and adoptive children of the proposed
12 conservatee's parents' siblings.

13 (4) The natural and adoptive children of the proposed
14 conservatee's siblings.

15 (c) If the petitioner or proposed conservator is a professional
16 fiduciary, as described in Section 2340, who is required to be
17 licensed under the Professional Fiduciaries Act (Chapter 6
18 (commencing with Section 6500) of Division 3 of the Business
19 and Professions Code), the petition shall include the following:

20 (1) The petitioner's or proposed conservator's proposed hourly
21 fee schedule or another statement of his or her proposed
22 compensation from the estate of the proposed conservatee for
23 services performed as a conservator. The petitioner's or proposed
24 conservator's provision of a proposed hourly fee schedule or
25 another statement of his or her proposed compensation, as required
26 by this paragraph, shall not preclude a court from later reducing
27 the petitioner's or proposed conservator's fees or other
28 compensation.

29 (2) Unless a petition for appointment of a temporary conservator
30 that contains the statements required by this paragraph is filed
31 together with a petition for appointment of a conservator, both of
32 the following:

33 (A) A statement of the petitioner's or proposed conservator's
34 license information.

35 (B) A statement explaining who engaged the petitioner or
36 proposed conservator or how the petitioner or proposed conservator
37 was engaged to file the petition for appointment of a conservator
38 or to agree to accept the appointment as conservator and what prior
39 relationship the petitioner or proposed conservator had with the

1 proposed conservatee or the proposed conservatee's family or
2 friends.

3 (d) If the petition is filed by a person other than the proposed
4 conservatee, the petition shall include a declaration of due diligence
5 showing both of the following:

6 (1) Either the efforts to find the proposed conservatee's relatives
7 or why it was not feasible to contact any of them.

8 (2) Either the preferences of the proposed conservatee
9 concerning the appointment of a conservator and the appointment
10 of the proposed conservator or why it was not feasible to ascertain
11 those preferences.

12 (e) If the petition is filed by a person other than the proposed
13 conservatee, the petition shall state whether or not the petitioner
14 is a creditor or debtor, or the agent of a creditor or debtor, of the
15 proposed conservatee.

16 (f) If the proposed conservatee is a patient in or on leave of
17 absence from a state institution under the jurisdiction of the State
18 Department of State Hospitals or the State Department of
19 Developmental Services and that fact is known to the petitioner
20 or proposed conservator, the petition shall state that fact and name
21 the institution.

22 (g) The petition shall state, so far as is known to the petitioner
23 or proposed conservator, whether or not the proposed conservatee
24 is receiving or is entitled to receive benefits from the Veterans
25 Administration and the estimated amount of the monthly benefit
26 payable by the Veterans Administration for the proposed
27 conservatee.

28 (h) The petition may include an application for any order or
29 orders authorized under this division, including, but not limited
30 to, orders under Chapter 4 (commencing with Section 1870).

31 (i) The petition may include a further statement that the proposed
32 conservatee is not willing to attend the hearing on the petition,
33 does not wish to contest the establishment of the conservatorship,
34 and does not object to the proposed conservator or prefer that
35 another person act as conservator.

36 (j) In the case of an allegedly developmentally disabled adult,
37 the petition shall set forth the following:

38 (1) The nature and degree of the alleged disability, the specific
39 duties and powers requested by or for the limited conservator, and

1 the limitations of civil and legal rights requested to be included in
2 the court's order of appointment.

3 (2) Whether or not the proposed limited conservatee is or is
4 alleged to be developmentally disabled.

5 Reports submitted pursuant to Section 416.8 of the Health and
6 Safety Code meet the requirements of this section, and
7 conservatorships filed pursuant to Article 7.5 (commencing with
8 Section 416) of Part 1 of Division 1 of the Health and Safety Code
9 are exempt from providing the supplemental information required
10 by this section, so long as the guidelines adopted by the State
11 Department of Developmental Services for regional centers require
12 the same information that is required pursuant to this section.

13 SEC. 3. Section 2250 of the Probate Code is amended to read:

14 2250. (a) On or after the filing of a petition for appointment
15 of a guardian or conservator, any person entitled to petition for
16 appointment of the guardian or conservator may file a petition for
17 appointment of:

18 (1) A temporary guardian of the person or estate, or both.

19 (2) A temporary conservator of the person or estate, or both.

20 (b) The petition shall state facts which establish good cause for
21 appointment of the temporary guardian or temporary conservator.
22 The court, upon that petition or other showing as it may require,
23 may appoint a temporary guardian of the person or estate, or both,
24 or a temporary conservator of the person or estate, or both, to serve
25 pending the final determination of the court upon the petition for
26 the appointment of the guardian or conservator.

27 (c) If the petitioner, proposed guardian, or proposed conservator
28 is a professional fiduciary, as described in Section 2340, who is
29 required to be licensed under the Professional Fiduciaries Act
30 (Chapter 6 (commencing with Section 6500) of Division 3 of the
31 Business and Professions Code), the petition for appointment of
32 a temporary guardian or temporary conservator shall include the
33 following:

34 (1) The petitioner's, proposed guardian's, or proposed
35 conservator's proposed hourly fee schedule or another statement
36 of his or her proposed compensation from the estate of the proposed
37 ward or proposed conservatee for services performed as a guardian
38 or conservator. The petitioner's, proposed guardian's, or proposed
39 conservator's provision of a proposed hourly fee schedule or
40 another statement of his or her proposed compensation, as required

1 by this paragraph, shall not preclude a court from later reducing
2 the petitioner's, proposed guardian's, or proposed conservator's
3 fees or other compensation.

4 (2) Unless a petition for appointment of a guardian or
5 conservator that contains the statements required by this paragraph
6 is filed together with a petition for appointment of a temporary
7 guardian or temporary conservator, both of the following:

8 (A) A statement of the petitioner's, proposed guardian's, or
9 proposed conservator's registration or license information.

10 (B) A statement explaining who engaged the petitioner, proposed
11 guardian, or proposed conservator or how the petitioner, proposed
12 guardian, or proposed conservator was engaged to file the petition
13 for appointment of a temporary guardian or temporary conservator
14 or to agree to accept the appointment as temporary guardian or
15 temporary conservator and what prior relationship the petitioner,
16 proposed guardian, or proposed conservator had with the proposed
17 ward or proposed conservatee or the proposed ward's or proposed
18 conservatee's family or friends.

19 (d) If the petition is filed by a party other than the proposed
20 conservatee, the petition shall include a declaration of due diligence
21 showing both of the following:

22 (1) Either the efforts to find the proposed conservatee's relatives
23 named in the petition for appointment of a general conservator or
24 why it was not feasible to contact any of them.

25 (2) Either the preferences of the proposed conservatee
26 concerning the appointment of a temporary conservator and the
27 appointment of the proposed temporary conservator or why it was
28 not feasible to ascertain those preferences.

29 (e) Unless the court for good cause otherwise orders, at least
30 five court days before the hearing on the petition, notice of the
31 hearing shall be given as follows:

32 (1) Notice of the hearing shall be personally delivered to the
33 proposed ward if he or she is 12 years of age or older, to the parent
34 or parents of the proposed ward, and to any person having a valid
35 visitation order with the proposed ward that was effective at the
36 time of the filing of the petition. Notice of the hearing shall not be
37 delivered to the proposed ward if he or she is under 12 years of
38 age. In a proceeding for temporary guardianship of the person,
39 evidence that a custodial parent has died or become incapacitated,
40 and that the petitioner or proposed guardian is the nominee of the

1 custodial parent, may constitute good cause for the court to order
2 that this notice not be delivered.

3 (2) Notice of the hearing shall be personally delivered to the
4 proposed conservatee, and notice of the hearing shall be served
5 on the persons required to be named in the petition for appointment
6 of conservator. If the petition states that the petitioner and the
7 proposed conservator have no prior relationship with the proposed
8 conservatee and has not been nominated by a family member,
9 friend, or other person with a relationship to the proposed
10 conservatee, notice of hearing shall be served on the public
11 guardian of the county in which the petition is filed.

12 (3) A copy of the petition for temporary appointment shall be
13 served with the notice of hearing.

14 (f) If a temporary guardianship is granted ex parte and the
15 hearing on the general guardianship petition is not to be held within
16 30 days of the granting of the temporary guardianship, the court
17 shall set a hearing within 30 days to reconsider the temporary
18 guardianship. Notice of the hearing for reconsideration of the
19 temporary guardianship shall be provided pursuant to Section
20 1511, except that the court may for good cause shorten the time
21 for the notice of the hearing.

22 (g) Visitation orders with the proposed ward granted prior to
23 the filing of a petition for temporary guardianship shall remain in
24 effect, unless for good cause the court orders otherwise.

25 (h) (1) If a temporary conservatorship is granted ex parte, and
26 a petition to terminate the temporary conservatorship is filed more
27 than 15 days before the first hearing on the general petition for
28 appointment of conservator, the court shall set a hearing within
29 15 days of the filing of the petition for termination of the temporary
30 conservatorship to reconsider the temporary conservatorship.
31 Unless the court otherwise orders, notice of the hearing on the
32 petition to terminate the temporary conservatorship shall be given
33 at least 10 days prior to the hearing.

34 (2) If a petition to terminate the temporary conservatorship is
35 filed within 15 days before the first hearing on the general petition
36 for appointment of conservator, the court shall set the hearing at
37 the same time that the hearing on the general petition is set. Unless
38 the court otherwise orders, notice of the hearing on the petition to
39 terminate the temporary conservatorship pursuant to this section
40 shall be given at least five court days prior to the hearing.

1 (i) If the court suspends powers of the guardian or conservator
2 under Section 2334 or 2654 or under any other provision of this
3 division, the court may appoint a temporary guardian or conservator
4 to exercise those powers until the powers are restored to the
5 guardian or conservator or a new guardian or conservator is
6 appointed.

7 (j) If for any reason a vacancy occurs in the office of guardian
8 or conservator, the court, on a petition filed under subdivision (a)
9 or on its own motion, may appoint a temporary guardian or
10 conservator to exercise the powers of the guardian or conservator
11 until a new guardian or conservator is appointed.

12 (k) On or before January 1, 2008, the Judicial Council shall
13 adopt a rule of court that establishes uniform standards for good
14 cause exceptions to the notice required by subdivision (e), limiting
15 those exceptions to only cases when waiver of the notice is
16 essential to protect the proposed conservatee or ward, or the estate
17 of the proposed conservatee or ward, from substantial harm.

18 (l) A superior court shall not be required to perform any duties
19 imposed pursuant to the amendments to this section enacted by
20 Chapter 493 of the Statutes 2006 until the Legislature makes an
21 appropriation identified for this purpose.

22 SEC. 4. Section 2614.7 is added to the Probate Code, to read:

23 2614.7. If a guardian or conservator of the person or estate, or
24 both, is a professional fiduciary, as described in Section 2340, who
25 is required to be licensed under the Professional Fiduciaries Act
26 (Chapter 6 (commencing with Section 6500) of Division 3 of the
27 Business and Professions Code), the guardian or conservator shall
28 file, concurrently with the inventory and appraisal required by
29 Section 2610, a proposed hourly fee schedule or another statement
30 of his or her proposed compensation from the estate of the ward
31 or conservatee for services performed as a guardian or conservator.
32 The filing of a proposed hourly fee schedule or another statement
33 of the guardian's or conservator's proposed compensation, as
34 required by this section, shall not preclude a court from later
35 reducing the guardian's, conservator's, or his or her attorney's fees
36 or other compensation.

37 SEC. 5. Section 2614.8 is added to the Probate Code, to read:

38 2614.8. ~~(a)~~At any time on or after one year from the
39 submission of an hourly fee schedule or another statement of
40 proposed compensation under this section or under Section 1510,

1 1821, 2250, or 2614.7, a guardian or conservator who is a
2 professional fiduciary may submit a new proposed hourly fee
3 schedule or another statement of his or her proposed compensation
4 from the estate of the proposed ward or proposed conservatee. *The*
5 *submittal of a new hourly fee schedule or another statement of the*
6 *guardian's or conservator's proposed compensation, as authorized*
7 *by this section, shall not preclude a court from later reducing the*
8 *guardian's or conservator's hourly fees or other compensation,*
9 *or his or her attorney's fees or other compensation.*

10 ~~(b) (1) Notice of how to file an objection to the new proposed~~
11 ~~hourly fee schedule or another statement of proposed compensation~~
12 ~~shall be given for the period and in the manner provided in Chapter~~
13 ~~3 (commencing with Section 1460) of Part 1.~~

14 ~~(2) The notices required by paragraph (1) shall be made to the~~
15 ~~court investigator, if appointed, for the period and in the manner~~
16 ~~provided in Chapter 3 (commencing with Section 1460) of Part 1.~~

17 ~~(c) (1) Any person entitled to notice under paragraph (1) of~~
18 ~~subdivision (b) may file with the court a written objection to the~~
19 ~~new proposed hourly fee schedule or another statement of proposed~~
20 ~~compensation. The court clerk shall set any objections for a hearing~~
21 ~~no fewer than 15 days after the date the objections are filed.~~

22 ~~(2) If an objection is filed pursuant to paragraph (1), the guardian~~
23 ~~or conservator shall have the burden of establishing the need for~~
24 ~~the new proposed hourly fee schedule or another statement of~~
25 ~~proposed compensation.~~

26 SEC. 6. Section 2643 of the Probate Code is amended to read:
27 2643. (a) Except as provided in Section 2643.1, on petition
28 by the guardian or conservator of the person or estate, or both, the
29 court may by order authorize periodic payments on account to any
30 one or more of the following persons for the services rendered by
31 that person during the period covered by each payment:

- 32 (1) The guardian of the person.
33 (2) The guardian of the estate.
34 (3) The conservator of the person.
35 (4) The conservator of the estate.
36 (5) The attorney for the guardian or conservator of the person
37 or estate, or both.

38 (b) Notice of the hearing on the petition shall be given for the
39 period and in the manner provided in Chapter 3 (commencing with
40 Section 1460) of Part 1.

(c) The petition shall describe the services to be rendered on a periodic basis and the reason why authority to make periodic payments is requested. In fixing the amount of the periodic payment, the court shall take into account the services to be rendered on a periodic basis and the reasonable value of those services. The guardian or conservator of the estate may make the periodic payments authorized by the order only if the services described in the petition are actually rendered. The payments made pursuant to the order are subject to review by the court upon the next succeeding account of the guardian or conservator of the estate to determine that the services were actually rendered and that the amount paid on account was not unreasonable, and the court shall make an appropriate order if the court determines that the amount paid on account was either excessive or inadequate in view of the services actually rendered.

SEC. 7. Section 2643.1 is added to the Probate Code, to read:

2643.1. (a) On petition by a guardian or conservator of the person or estate, or both, who is a professional fiduciary, as described in Section 2340 and who is required to be licensed under the Professional Fiduciaries Act (Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code), the court may by order authorize periodic payments on account to a person described in subdivision (a) of Section 2643 for the services rendered by that person during the period covered by each payment only if that person has filed a proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the ward or conservatee for services performed as a guardian or conservator, as required by Section 2614.7, and only after the court has addressed any objections filed pursuant to subdivision (d).

(b) The petition shall describe the services to be rendered on a periodic basis, the reason why authority to make periodic payments is requested, and a good faith estimate of the fees to be charged by the professional fiduciary from the date the petition is filed up to, and including, the date of the next succeeding account required by Section 2620 or, if the next succeeding account required by Section 2620 is due in less than one year, a good faith estimate of the fees to be charged by the professional fiduciary from the date the petition is filed through the next succeeding 12 months, inclusive. Prior to ordering periodic payments or fixing the amount

1 of the periodic payment, the court shall determine whether making
2 periodic payments is in the best interest of the ward or conservatee,
3 taking into consideration the needs of the ward or conservatee and
4 the need to preserve and protect the estate. If the court determines
5 that making periodic payments is not in the best interest of the
6 ward or conservatee, the court shall deny the petition to authorize
7 periodic payments. If the court determines that making periodic
8 payments is in the best interest of the ward or conservatee, the
9 court shall fix the amount of the periodic payment. In fixing the
10 amount of the periodic payment, the court shall take into account
11 the services to be rendered on a periodic basis and the reasonable
12 value of those services.

13 (c) (1) Notice of the hearing on the petition and notice of how
14 to file an objection to the petition shall be given for the period and
15 in the manner provided in Chapter 3 (commencing with Section
16 1460) of Part 1.

17 (2) The notices required by paragraph (1) shall be made to the
18 court investigator for the period and in the manner provided in
19 Chapter 3 (commencing with Section 1460) of Part 1.

20 (d) (1) Any person entitled to notice under paragraph (1) of
21 subdivision (c) may file with the court a written objection to the
22 authorization of periodic payments on account. The court clerk
23 shall set any objections for a hearing no fewer than 15 days after
24 the date the objections are filed.

25 (2) If an objection is filed pursuant to paragraph (1), the guardian
26 or conservator shall have the burden of establishing the necessity
27 for and amount, if any, of periodic payments.

28 (e) The guardian or conservator of the estate may make the
29 periodic payments authorized by the order only if the services
30 described in the petition are actually rendered. The payments made
31 pursuant to the order shall be reviewed by the court upon the next
32 succeeding account of the guardian or conservator of the estate to
33 determine that the services were actually rendered and that the
34 amount paid on account was reasonable and in the best interest of
35 the ward or conservatee, taking into consideration the needs of the
36 ward or conservatee and the need to preserve and protect the estate.
37 The court shall make an appropriate order reducing the guardian
38 or conservator's compensation if the court determines that the
39 amount paid on account was either unreasonable or not in the best

1 interest of the ward or conservatee in view of the services actually
2 rendered.
3 (f) The authorization for periodic payments granted pursuant
4 to this section shall terminate on a date determined by the court,
5 but not later than the due date of the next succeeding account
6 required by Section 2620. Nothing in this section shall preclude a
7 guardian or conservator from filing a subsequent petition to receive
8 periodic payments pursuant to this section.

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